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Regulatory  
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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30 -120
<b>Regulation title</b>	Medallion II
<b>Action title</b>	MCO Rural Exception
<b>Date this document prepared</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

1) Please explain why this is an “emergency situation” as described above.

2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an agency may adopt regulations in an “emergency situation”: (A) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (B) a situation in which Virginia statutory law, the Virginia appropriation act,

or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of Subdivision A.4 of § 2.2-4006; or (C) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action.

This suggested emergency regulation meets the standard at COV 2.2-4011(B) as follows: The 2009 Acts of Assembly Chapter 781, Item 306(M)(1) and (M)(2) states: “The Department of Medical Assistance Services shall have the authority to seek federal approval of changes to its MEDALLION waiver and its Medallion II waiver. In order to conform the state regulations to the federally approved changes and to implement the provisions of this act, the department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes.”

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled “MCO Rural Exception (12 VAC30-120)” and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

This action conforms the *Virginia Administrative Code* to changes that have been approved by the Centers for Medicare and Medicaid Services to the Virginia Medicaid managed care waiver program entitled Medallion II. The approved changes concern the addition of the rural exception to the Medallion II program in areas federally designated as ‘rural’ where there is only one

contracted MCO. The approved changes also provide for several organizational improvements and the updating of internal citations.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

In order to maintain the integrity of Virginia’s Medallion II (MCO) program, and to adhere to the mandatory managed care requirements as set forth in the 1915(b) Managed Care Waiver, DMAS is requesting changes to the specified regulations (detailed below) to bring the *Virginia Administrative Code* into compliance with the CMS-approved 1915(b) Managed Care Waiver. These changes include the addition of the “rural” exception option, which has been amended in the current waiver effective 10/1/09.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

The state regulations that are affected by this action are Medallion II (12 VAC 30-120).

Currently, the Medallion II regulations do not provide for a rural exception. Until recently, managed care programs operated throughout the state with the MEDALLION PCCM program (MEDALLION Primary Care Case Management) as the sole program in the far southwest, the Medallion II program with one MCO option and MEDALLION PCCM program in Roanoke and the surrounding areas, and the Medallion II program with 2 or more contracted MCOs in all other localities. Newly assigned recipients residing in Medallion II areas are afforded a 90-day period of time in which to re-consider the MCO/plan to which they have been assigned. If they elect to switch to the alternative MCO/plan during this 90-day period, they are permitted to do so with no penalty. After the end of the 90-day period, however, they are locked in to receiving care from that MCO until the next open enrollment period.

Revisions to 12 VAC 30-120-360, 12 VAC 30-120-370, and 12 VAC 30-120-380 are being requested to bring the *Virginia Administrative Code* into compliance with the CMS-approved 1915(b) Managed Care Waiver. It is under this waiver that both the Medallion II (MCO) program and MEDALLION (PCCM) program operate. The waiver is renewed every two years with amendments requested, as needed. The proposed regulation changes in this document are specific to the Medallion II (MCO) program.

The amendment to include the “rural” exception option (also referred to as the “rural option”) to DMAS’ 1915(b) waiver application (section A.1.C.3) was submitted to CMS on 8/13/09, and subsequently approved, for an effective date of 10/1/09. The need for this amendment to the

waiver, pursuant to 42 CFR 438.52 (b), resulted from Virginia Premier Health Plan exiting Culpeper County and leaving only one remaining contracted health plan (AMERIGROUP Community Care) in the locality. The rural exception as provided for in these regulations is an area where qualifying Medallion II recipients are mandated to enroll in the one contracted managed care organization.

Section 12 VAC 30-120-360 adds a definition for the rural exception option, as well as for retractions as referenced in 12 VAC 30-120-370 (F). Other noted changes provide clarification to policies surrounding the rural exception area (e.g. pre-assignment and open enrollment) and point to the section 1915(b) Managed Care Waiver and Medallion II Contract for terminology corrections or clarification in other areas of these regulations. The name of a sister state agency has been updated from the previous title of Department of Mental Health, Mental Retardation and Substance Abuse Services to the new title of Department of Behavioral Health & Developmental Services.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-120-360		This section provides definitions for the Medallion II program.	Add a definition of rural exception to conform VAC to federally approved waiver. Also added “retractions” as referenced in 12 VAC 30-120-370(F). New definition for a “PCP of record” is added for clarity.
12 VAC 30-120-370 B  12VAC30-120-370D  12VAC30-120-370F  12VAC-120-370G  370(G)(6)  12 VAC 30-	New sub-section D	Section B lists the reasons for exclusion from mandatory managed care.          Section F(4)    Section G, items 1-5 outline the assignment process for Medallion II recipients.          Section permits open	Add documentation to specify that list in 12VAC 30-120-370B is not all inclusive and to point to the 1915(b) Managed Care Waiver for a comprehensive list.          New section provides for the new requirements that will limit recipients’ ability to choose between MCOs because there is only one MCO in a rural exception area.          Text deleted that is duplicative of the definition.          Internal citation is updated with the new subsection numbering. Item 3 is the new text for client assignment to the one MCO in rural exception localities. Item 5 is being revised to provide clarification for enrollments in one MCO and PCCM areas.          Item 6 is revised to include ‘retractions’ as defined.          Clarification provided that recipients in areas



comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

**Participatory approach**

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The agency/board will use the participatory approach to develop a proposal if it receives at least 25 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.